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September 15, 1994

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VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communication Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Petition for Reconsideration of the Fifth Report and
Order in PP Docket No. 93-253 Adopting Rules for the
Broadband PCS License Auctions
Permissible Ex Parte Communication

Dear Mr. Caton:

Pursuant to § 1.1206 of the Commission's Rules, there is transmitted herewith, in duplicate, written notice of a permissible ex parte presentation made this day by James Troup, attorney for Telephone Electronics Corporation (TEC), Joseph D. Fail, TEC's President, Joey Garner, TEC's Director of Corporate Relations, and James Garner, TEC's Manager of Operations Development, to Mary P. McManus, Senior Legal Advisor to Commissioner Susan Ness, and Lauren Belvin, Senior Legal Advisor to Commissioner James H. Quello.

These meetings addressed the concerns described in TEC's petition for reconsideration filed on August 22, 1994. TEC's petition asked the Commission to allow rural telephone companies to bid directly in the auctions for the entrepreneurs' blocks.

No. of Pages 100
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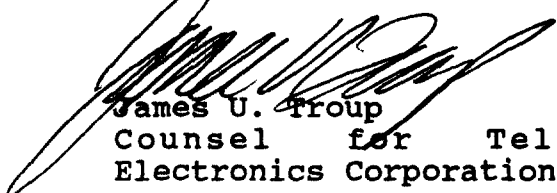
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We respectfully request that this letter and the attached enclosures be made a part of the record in this proceeding.

Respectfully submitted,



James U. Troup
Counsel for Telephone
Electronics Corporation

Enclosures

cc: Commissioner Susan Ness
Commissioner James H. Quello
Mary P. McManus
Lauren Belvin
Joseph D. Fail
James Garner
Joey Garner

THE ISSUE ON RECONSIDERATION

TEC's core business consists of six small, rural telephone companies.

Section 309(j) of the Communications Act requires the dissemination of PCS licenses among a wide variety of:

- (a) rural telephone companies;
- (b) small businesses; and
- (c) businesses owned by members of minority groups and women.

The Commission's auction rules for broadband PCS prohibit TEC's rural telephone companies from:

- (a) directly bidding on licenses in the entrepreneurs' blocks,
- or
- (b) receiving bidding preferences accorded to other small businesses.

THE RELIEF REQUESTED

TEC's petition requests:

- (1) That the Commission allow a rural telephone company to bid directly in the auction for the entrepreneurs' blocks for PCS licenses:
 - (a) covering an entire BTA so that it may effectively compete and provide PCS efficiently and
 - (b) covering BTAs outside its wireline service area in order to extend telephone service to the many rural households that lack phones.
- (2) That the Commission rely on the Commission's cost allocation rules and interaffiliate transaction regulations, rather than the affiliation rules for PCS, when determining a rural telephone company's eligibility to receive small business bidding preferences.
 - (a) Cross-pooling by a rural telephone company and its affiliates is already prohibited by Section 32.27(b) of the Commission's rules, which requires the payment of fair market value for funds transferred from an affiliate.

ALTERNATIVE RECOMMENDATION

Eliminate the gross revenue criteria because gross revenue is no indication of the amount of funds available for bidding during the auction.

Define a small business as an entity that together with its corporate affiliates has:

- (1) A net worth of less than \$30 million,
- (2) Total assets of less than \$300 million,
- (3) No attributable investor or affiliate who has a personal net worth of \$200 million or more,
- (4) A control group all of whose members and corporate affiliates are considered in determining compliance with the \$30 million net worth and the \$300 million total asset threshold, and
- (5) A control group holding 50.1% of the entity's voting interest, if a corporation, and at least 25% of the entity's equity on a fully diluted basis.

Do not consider the personal assets and net worth of individuals when determining compliance with the \$30 million net worth standard or the \$300 million total asset threshold because this would double count those amounts:

- (1) Once, when calculating the net worth and total assets of the PCS applicant and its corporate affiliates

and

- (2) Again, when including the value of the stock of the PCS applicant and its corporate affiliates held by individual investors.